

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LETTIE LANGDON,

Plaintiff,

v.

**SOUTHSIDE ATLANTA JVP d/b/a
MCDONALDS RESTAURANT, et
al.,**

Defendants.

1:04-cv-3422-WSD-ECS

ORDER

This matter is before the Court on Plaintiff's Motion to Voluntarily Dismiss Her Complaint Without Prejudice [34].

Plaintiff filed her Complaint on November 22, 2004, and Defendants filed their Answer on April 7, 2005. The parties engaged in discovery and, on September 26, 2005, Defendants moved for summary judgment on all of Plaintiff's claims. Plaintiff did not respond to Defendants' motion for summary judgment and instead, on November 14, 2005, moved to dismiss voluntarily her claims without prejudice. Defendants oppose Plaintiff's motion.

Rule 41 of the Federal Rules of Civil Procedure provides that, once an adverse party files its answer to the complaint, a party may not voluntarily dismiss an action “save upon order of the court and upon such terms and conditions as the court deems proper.” Fed. R. Civ. P. 41(a). The decision whether to allow a voluntary dismissal pursuant to Rule 41 is vested in the sound discretion of the district court. Fisher v. Puerto Rico Marine Mgmt., Inc., 940 F.2d 1502, 1502-03 (11th Cir. 1991). The Eleventh Circuit has instructed that, in exercising this discretion, district courts should keep in mind the interests of the defendant, for Rule 41(a)(2) exists chiefly for the protection of defendants.” Id.

Considering the time and expense already spent on discovery, that Defendants have undertaken to submit their motion for summary judgment and seek a ruling on this dispositive motion, Plaintiff’s lack of diligence in prosecuting this action, generally and that she moved to dismiss without prejudice in response to Defendants’ motion for summary judgment, the Court determines that voluntary dismissal is not appropriate here. Accordingly,

IT IS HEREBY ORDERED that the Plaintiff’s Motion to Voluntarily Dismiss Her Complaint Without Prejudice [34] is **DENIED**.

SO ORDERED, this 16th day of December, 2005.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE